87R11740 ADM-D

By:  Sherman, Sr. H.B. No. 4281

A BILL TO BE ENTITLED

AN ACT

relating to the pretrial release of defendants and a prohibition on the use of monetary bail bonds.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  This Act may be cited as the End Money Bail Act.

SECTION 2.  Article 1.07, Code of Criminal Procedure, is amended to read as follows:

Art. 1.07.  RIGHT TO BAIL. (a) All prisoners shall be bailable unless for capital offenses when the proof is evident. This provision shall not be so construed as to prevent bail after indictment found upon examination of the evidence, in such manner as may be prescribed by law.

(b)  Notwithstanding any other law, a prisoner may not be required to deposit money with the court or provide financial security for purposes of being released on bail.

SECTION 3.  Article 14.06, Code of Criminal Procedure, is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:

(b)  Subject to Subsection (b-1), a [~~A~~] peace officer who is charging a person, including a child, with committing a misdemeanor [~~an~~] offense shall [~~that is a Class C misdemeanor, other than an offense under Section 49.02, Penal Code, may~~], instead of taking the person before a magistrate, issue a citation to the person that contains:

(1)  written notice of the time and place the person must appear before a magistrate;

(2)  the name and address of the person charged;

(3)  the offense charged;

(4)  information regarding the alternatives to the full payment of any fine or costs assessed against the person, if the person is convicted of the offense and is unable to pay that amount; and

(5)  the following admonishment, in boldfaced or underlined type or in capital letters:

"If you are convicted of a misdemeanor offense involving violence where you are or were a spouse, intimate partner, parent, or guardian of the victim or are or were involved in another, similar relationship with the victim, it may be unlawful for you to possess or purchase a firearm, including a handgun or long gun, or ammunition, pursuant to federal law under 18 U.S.C. Section 922(g)(9) or Section 46.04(b), Texas Penal Code. If you have any questions whether these laws make it illegal for you to possess or purchase a firearm, you should consult an attorney."

(b-1)  Subsection (b) does not apply if the peace officer has reasonable cause to believe that conditions of release are necessary in accordance with Articles 17.021(b) and (c) to ensure the person's appearance in court as required or to ensure the safety of an identifiable person.

SECTION 4.  Article 15.17(g), Code of Criminal Procedure, is amended to read as follows:

(g)  If a person charged with an offense punishable as a misdemeanor appears before a magistrate in compliance with a citation issued under Article 14.06(b) [~~or (c)~~], the magistrate shall perform the duties imposed by this article in the same manner as if the person had been arrested and brought before the magistrate by a peace officer.  After the magistrate performs the duties imposed by this article, the magistrate shall [~~except for good cause shown may~~] release the person on personal bond in accordance with Article 17.021.  If a person who was issued a citation for an offense punishable as a Class A or B misdemeanor [~~under Article 14.06(c)~~] fails to appear as required by that citation, the magistrate before which the person is required to appear shall issue a warrant for the arrest of the accused.

SECTION 5.  Chapter 17, Code of Criminal Procedure, is amended by adding Articles 17.021, 17.022, and 17.023 to read as follows:

Art. 17.021.  RELEASE ON PERSONAL BOND REQUIRED. (a) Notwithstanding any other law, in each case in which a defendant is eligible for bail under the constitution and laws of this state, the magistrate considering the defendant's release shall order that the defendant be:

(1)  released on personal bond without conditions of release; or

(2)  released on personal bond with conditions of release.

(b)  Except as provided by Subsection (c), a magistrate may not impose any condition of release on the defendant unless the magistrate determines by clear and convincing evidence after considering the specific facts concerning the defendant that:

(1)  release on personal bond without conditions is insufficient to reasonably mitigate a high risk of nonappearance or of serious bodily injury to an identifiable person; and

(2)  the conditions to be imposed are the least restrictive conditions necessary to mitigate the risk described by Subdivision (1).

(c)  A magistrate may not impose a condition of release that restricts the liberty of the defendant unless the magistrate determines by clear and convincing evidence that the conditions to be imposed are the least restrictive conditions necessary to reasonably mitigate a high risk of imminent, intentional flight or of serious bodily injury to an identifiable person. For purposes of this subsection, a condition that restricts the defendant's liberty includes a condition:

(1)  requiring pretrial supervision;

(2)  requiring drug testing;

(3)  requiring inpatient or outpatient treatment;

(4)  imposing travel restrictions or home confinement;

(5)  imposing a curfew; or

(6)  requiring electronic monitoring.

(d)  Any condition imposed on a defendant's release must preserve the ability of the defendant to confer with the defendant's attorney and prepare for trial.

(e)  A magistrate who imposes conditions of release shall issue an order that includes an explanation of how the conditions constitute the least restrictive conditions necessary to address the specific risks identified with respect to the defendant.

(f)  A defendant has the right to be represented by counsel at any hearing at which the magistrate imposes conditions of release on the defendant.

(g)  A magistrate may not require a defendant to pay any fee related to any condition of release.

Art. 17.022.  RELEASE ON PERSONAL BOND PENDING SENTENCING OR APPEAL. (a) Following conviction, any conditions of release that are imposed on the defendant under Article 17.021 are presumed to be sufficient to ensure the defendant's appearance in court for sentencing or pending any appeal.

(b)  A court may impose additional conditions of release on the defendant only after a hearing at which the defendant has the right to be represented by counsel.

Art. 17.023.  REPORTING TO OFFICE OF COURT ADMINISTRATION. (a) Each magistrate who releases a defendant on personal bond shall submit a monthly report to the Office of Court Administration of the Texas Judicial System with the following information for each defendant released:

(1)  the name;

(2)  the offense charged;

(3)  the length of the period the defendant was in custody before release; and

(4)  the conditions of release imposed on the defendant.

(b)  A report required by Subsection (a) must be on a form prescribed by the Office of Court Administration.

SECTION 6.  Articles 14.06(c) and (d), Code of Criminal Procedure, are repealed.

SECTION 7.  (a) Except as provided by Subsection (b) of this section, the change in law made by this Act applies only to a person who is arrested on or after the effective date of this Act. A person who is arrested before the effective date of this Act is governed by the law in effect on the date the person was arrested, and the former law is continued in effect for that purpose.

(b)  The change in law made by this Act in amending Articles 14.06 and 15.17, Code of Criminal Procedure, applies only to a person who is issued a citation on or after the effective date of this Act. A person who is issued a citation before the effective date of this Act is governed by the law in effect on the date the citation was issued, and the former law is continued in effect for that purpose.

SECTION 8.  This Act takes effect September 1, 2021.